

In the
United States Court of Appeals
For the Ninth Circuit

THERON LEROY ELDER,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Petition for Rehearing

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UNITED STATES OF AMERICA,
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No. 13405

Petition for Rehearing

Comes now the appellant, by his attorney, and files this his Petition for Rehearing of the judgment entered by the Court on February 24, 1953, affirming the judgment of the Court below, and for grounds thereof respectfully represents that:

1. This Court, in this case, concluded it could not agree with the Second Circuit (*United States v. Nugent*, 2d Cir. 200 F. 2d 46), wherein the Second Circuit held that the F.B.I. investigative report should have been placed in the registrant's (appellant's) selective service file, and that its absence vitiated the subsequent selective service classification.

2. The Second Circuit followed its *Nugent* decision in deciding *Packer v. United States*, 200 F. 2d 540.

3. The Third Circuit decided not to require reargument in *Borisuk v. United States*, F. 2d, unless and until the Supreme Court decided not to grant certiorari in *Nugent* and *Packer*.

4. The Supreme Court of the United States granted certiorari in *United States v. Nugent*, Number 540, and *United States v. Packer*, Number 573, on March 16, 1953, and these cases have been assigned to the summary docket.

Wherefore, upon the foregoing grounds, and for other reasons appearing in Appellant's Brief, it is respectfully urged that a rehearing be granted in this matter, that the Court defer ruling on this Petition until the Supreme Court decides the *Nugent* and *Packer* cases, and that the mandate of this Court be stayed pending the disposition of this Petition.

J. B. TIETZ,
Attorney for Appellant.

CERTIFICATE

Counsel further represents and certifies:

1. Appellant is presently in Tucson Federal Prison serving the term of imprisonment imposed;
2. In counsel's judgment this Petition is well founded and is not interposed for delay.

J. B. TIETZ,
Attorney for Appellant.